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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

Christine Smith,

Plaintiff,

v.

Capital One, National Association and
DOES 1 through 100 inclusive,

Defendants.

CASE NO.

PLAINTIFF’S COMPLAINT FOR DAMAGES:

1. Violation of the Rosenthal Fair Debt Collection Practices Act
2. Violation of the Telephone Consumer Protection Act

COMES NOW Plaintiff Christine Smith, an individual, based on information and belief, to allege as follows:

INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant’s violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et seq.* (hereinafter “Rosenthal Act”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and violation of the Telephone Consumer Protection Act 14 U.S.C. §227, *et seq.* (hereinafter “TCPA”), which prohibits the use of automated dialing equipment when making calls to consumers.

1 2. Plaintiff brings this action against Defendant Capital One, National Association
2 (hereinafter “Capital One” or “Defendant”) for its abusive and outrageous conduct in
3 connection with debt collection activity.

4 3. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature made the following
5 findings and purpose in creating the Rosenthal Act:

6 (a)(1) The banking and credit system and grantors of credit to consumers are dependent
7 upon the collection of just and owing debts. Unfair or deceptive collection practices
8 undermine the public confidence which is essential to the continued functioning of the
9 banking and credit system and sound extensions of credit to consumers.

10 (2) There is need to ensure that debt collectors and debtors exercise their
11 responsibilities to another with fairness and honesty and due regard or the rights of the
12 other.

13 (b) It is the purpose of this title to prohibit debt collectors from engaging in unfair or
14 deceptive acts of practices in the collection of consumer debts and to require debtors to
15 act fairly in entering into and honoring such debts, as specified in this title.

16 4. While many violations are described below with specificity, this Complaint alleges
17 violations of the statutes cited in their entirety.

18 5. The TCPA was designed to prevent calls like the ones described herein, and to protect
19 the privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give
20 consumers a choice as to how corporate entities may contact them and to prevent the nuisance
21 associated with automated or prerecorded calls.

22 **JURISDICTION & VENUE**

23 6. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47 U.S.C. §
24 227.

25 7. This venue is proper pursuant to 28 U.S.C. §1391(b).

26 **GENERAL ALLEGATIONS**

27 8. Plaintiff Christine Smith (hereinafter “Plaintiff”) is an individual residing in the state
28 of California, and is a “debtor” as defined by Cal. Civ. Code §1788.2(g).

9. At all relevant times herein, Defendant Capital One was a company engaged, by the
use of mail, email, and telephone, in the business of collecting a debt from Plaintiff, and a
“consumer debt,” as defined by Cal. Civ. Code §1788.2(f).

1 10. At all relevant times, Defendant acted as a “debt collector” within the meaning of Cal.
2 Civ. Code §1788.2(c)

3 11. Plaintiff had taken out an unsecured loan with Capital One on or about December of
4 2012.

5 12. The loan Plaintiff took from Defendant Capital One was extended primarily for
6 personal, family or household purposes and is therefore a “debt” as that terms is defined by the
7 Calif. Civil Code § 1788.2(d) of the Rosenthal Act.

8 13. Defendant Capital One has been attempting to collect on a debt that originated from
9 monetary credit that was extended primarily for personal, family, or household purposes, and
10 was therefore a “consumer credit transaction” within the meaning of Calif. Civil Code §
11 1788.2(3) of the Rosenthal Act.

12 14. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant
13 Capital One arising from what Plaintiff is informed and believes was a consumer credit
14 transaction, the money allegedly owed was a “consumer debt” within the meaning of
15 California Civil Code § 1788.2(f) of the Rosenthal Act.

16 15. Plaintiff is informed and believes that Defendant is one who regularly collects or
17 attempts to collect debts on behalf of themselves, and is therefore a “debt collector” within the
18 meaning of the Calif. Civil Code § 1788.2(c) of the Rosenthal Act, and thereby engages in
19 “debt collection” within the meaning of the California Civil Code § 1788.2(b) of the Rosenthal
20 Act, and is also therefore a “person” within the meaning of California Civil Code § 1788.2(g)
21 of the Rosenthal Act.

22 16. Plaintiff’s account was an unsecured loan and Plaintiff began making payments on the
23 accounts.

24 17. Plaintiff began making payments on the loan before she became financially unable to
25 keep up with the monthly payments.

26 18. Defendant Capital One began contacting Plaintiff in April of 2016 to inquire about the
27 status of the loan and to collect on the payments that were no longer being made.

28 19. Plaintiff retained counsel to assist in dealing with Capital One debt and to seek some
type of financial relief.

1 20. Counsel for Plaintiff sent Defendant Capital One a letter confirming representation of
2 Plaintiff and that Defendant was to no longer contact Plaintiff directly and that all
3 calls/letters/collection efforts were to no longer be directed at Plaintiff.

4 21. Counsel for Plaintiff sent the letter of representation to Capital One on or about April
5 8, 2016.

6 22. Plaintiff informed Capital One that she was revoking her consent to be called on her
7 telephone on April 8, 2016.

8 23. Defendant Capital One continued to contact Plaintiff between approximately April 11,
9 2016 – present; the type of contact was through daily phone calls to Plaintiff.

10 24. Plaintiff was contacted daily nearly every day regarding non-payment of the debt
11 owed to Capital One despite Capital One being notified that Plaintiff had retained counsel to
12 deal specifically with the debt owed to Capital One.

13 25. Capital One's calls were frequent in nature and continued despite receiving written
14 confirmation that Plaintiff was represented by an attorney.

15 **FIRST CAUSE OF ACTION**

16 (Violation of the Rosenthal Act)

17 (Cal. Civ. Code §§ 1788-1788.32)

18 (Against Defendants and Does 1-100)

19 26. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
20 above as though fully set forth herein.

21 27. Plaintiff provided written notice that he was represented by sending Defendant a letter
22 with the name, address, and contact information of her attorney and informed Defendant that she
23 was represented.

24 28. Defendant continued to call and attempt to make contact with Plaintiff despite receiving
25 notice of representation and being informed that Plaintiff had retained counsel in an effort to deal
26 with the debt that was owed to Defendant.

27 29. The calls and communications made by Defendant to Plaintiff were not related to
28 statements of Plaintiff's account and were attempts to collect a debt.

30. Plaintiff received daily calls from Capital One from at least April 17, 2016 – present.

31. Defendant violated Cal. Civ. Code §1788.14 by contacting Plaintiff after receiving
noticed that Plaintiff had retained an attorney.

SECOND CAUSE OF ACTION

(Violation of the TCPA)
(47 USC § 227)
(Against Defendants and Does 1-100)

32. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

33. Since at least about April 17, 2016 Defendant started calling Plaintiff's cellular telephone requesting that payment be made on the accounts Plaintiff held with Defendant.

34. Plaintiff informed Defendant that she was revoking consent to be contacted by Capital One on April 8, 2016.

35. Capital One called Plaintiff at least daily since Plaintiff withdrew her consent to be contacted by an automatic dialing machine.

36. Defendant would contact Plaintiff several times each day regarding payment on the accounts.

37. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver the collection messages without Plaintiff's prior express consent.

38. All calls placed by Defendant to Plaintiff utilized an "automatic telephone dialing system" as defined by 47 U.S.C. §227(a)(1).

39. These calls were made to Plaintiff's cellular telephone and were not calls for an emergency purposed as defined by 47 U.S.C. §227(b)(1)(B).

40. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(B).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. An award of actual damages pursuant to California Civil Code §1788.30(a), as will be proven at trial, which are cumulative and in addition to all other remedies provided for in any other cause of action pursuant to California Civil Code §1788.32.
- b. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §1788.30(b), which are cumulative and in addition to all other remedies provided for in California Civil Code §1788.32; and
- c. An award of costs of litigation and reasonable attorney's fees pursuant to Cal. Civ. Code §1788.30(c).

e. Pursuant to 47 U.S.C. §227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

SAGARIA LAW, P.C.
By: /s/ Scott Johnson
Scott Sagaria, Esq.
Scott Johnson, Esq.
Attorneys for Plaintiff

Plaintiff hereby demands trial of this matter by jury.

SAGARIA LAW, P.C.
/s/ Scott Johnson
Scott Sagaria, Esq.
Scott Johnson, Esq.
Attorneys for Plaintiff